

CHAPTER NO. 973

HOUSE BILL NO. 135

By Representative Odom

Substituted for: Senate Bill No. 131

By Senator Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 63, relative to professions of the healing arts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-4-103, is amended by adding the following language as a new item (4):

(4) Issue advisory private letter rulings to any affected licensee who makes such a request regarding any matters within the board's primary jurisdiction. Such private letter ruling shall only affect the licensee making such inquiry, and shall have no precedential value for any other inquiry or future contested case to come before the board. Any dispute regarding a private letter ruling may, if the board chooses to do so, be resolved pursuant to the declaratory order provisions of §4-5-223.

SECTION 2. Tennessee Code Annotated, Section 63-4-114, is amended by deleting subdivision (5) in its entirety and by substituting instead the following language:

(5) Solicitation, in person or by live telephone contact, by a licensee, or by an agent, servant, employee, or independent contractor of a licensee, of a patient with whom a licensee has no family or prior professional relationship; however, this shall not prohibit solicitation by targeted direct mail advertising or other forms of written, radio, or television advertising provided the advertising does not involve coercion, duress, or harassment and is not false, deceptive or misleading;

SECTION 3. Tennessee Code Annotated, Section 63-4-115, is amended by adding the following language as new subsections:

(d) The board may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious, and to act as a mechanism for diversion, to professional peer review organizations and/or impaired professionals, associations or foundations, those cases which the board, through established guidelines, deems appropriate; upon diversion, such entities shall retain the same immunity as provided by law for the board.

(e) The screening panels shall consist of as many members as the board directs, but shall include at least one (1) but no more than three (3) licensed chiropractors, who may be members of the board or may serve either voluntarily or through employment by or under contract with the board;

(f) The activities of the screening panels, and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act and shall remain confidential. The members

of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the board, and are not subject to deposition or subpoena to testify regarding any matter or issues raised in any contested case, criminal prosecution or civil lawsuit which may result from or be incident to cases processed before them.

(g) Notwithstanding any provision of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to the contrary, hearing officers are authorized to, and may hear board mediation, arbitration or disciplinary contested cases, but may not issue final orders in contested case matters. Notwithstanding any of the provisions of §§ 4-5-314 and 4-5-315, which may be or are inconsistent, such hearing officers may only issue findings of fact and conclusions of law which shall be referred directly to the board or a duly constituted panel thereof for final action. The board or duly constituted panel, after hearing testimony or arguments from both parties regarding the appropriate disciplinary action and, if allowed by the board, arguments on any controversy raised by the hearing officer's or designee's order, shall issue a final order to include the imposition of what, if any, disciplinary action is deemed appropriate. Only the board or a duly constituted panel thereof shall have the authority to issue final orders which dispose of a pending contested case regardless of whether the issues resulting in the dispositive action are procedural, substantive, factual or legal. If a hearing officer is not available when a contested case, or any motion filed therein requiring action, is ready and scheduled to be heard or fails to timely prepare findings and conclusions pursuant to board established guidelines, the board or a duly constituted panel thereof may rule on the motions and/or hear the contested case or utilize the record compiled before the hearing officers and prepare its own findings of fact, conclusions of law and then issue a final order. With regard to findings or conclusions issued by the hearing officer, or any mediator or arbitrator, the board or any duly constituted panel thereof which reviews the case may do any of the following:

(1) Adopt the hearing officer's, mediator's, or arbitrator's findings of fact and conclusions of law, in whole or in part;

(2) Make its own findings of fact and conclusions of law, based solely on the record and the expertise of the members of the board or panel, in addition to or in substitution of those made by the hearing officer, mediator or arbitrator;

(3) Remand the matter back to the hearing officer, mediator or arbitrator for action consistent with the board or panel findings and conclusions in the matter; or

(4) Reverse the hearing officer's, mediator's, or arbitrator's findings and/or dismiss the matter entirely.

(h) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures established by the board. The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing which contains findings that a licensee or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case against the licensee or person.

(i) Any elected officer of the board, or any duly appointed or elected chair or any panel of the board, or any screening panel, and any hearing officer,

arbitrator or mediator has the authority to administer oaths to witnesses, and upon probable cause being established, issue subpoenas for the attendance of witnesses and the production of documents and records.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 29, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 18th day of May 1998


DON SUNDQUIST, GOVERNOR